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IN THE

Supreme Court of the United States

October Term 1964

No. 252

DAVE FLEISCHER, individually and as trustee and receiver in dissolution of FLEISCHER STUDIOS, INCORPORATED, a Florida corporation,

Petitioner,

against

A.A.P., INC., ASSOCIATED ARTISTS PRODUCTIONS, INC., U.M. & M. TV CORP., W.P.I.X., INC., PARAMOUNT PICTURES, INC., PARAMOUNT PICTURES CORPORATION, DUMONT BROADCASTING CORPORATION, FLAMINGO FILMS, INC., KING FEATURES SYNDICATE, INC., FLEISCHER STUDIOS, INCORPORATED, a New York corporation, MAX FLEISCHER, individually and as co-trustee with plaintiff of FLEISCHER STUDIOS, INCORPORATED, a Florida corporation,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT, DUMONT BROADCASTING CORPORATION

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Statement

Although the amended complaint pleads two causes of action, only the first cause is pleaded against respondent Dumont Broadcasting Corporation ("Dumont").

Dumont is mentioned by name in the amended complaint only in Paragraph 23(g) which alleges:

> "(g) Defendant U.M.&M. T.V. Corp. with full knowledge actual or constructive of plaintiff's rights in the premises and that the contract of

> May 24, 1941 was nonassignable has pretended to purchase or has purchased outright the new cartoon The Raven and other film cartoons, the equitable and other property rights to which are in plaintiff individually and as cotrustee of Fleischer Studios, Florida, and defendant Dumont Broadcasting Corporation with like knowledge has broadcast or threatens to broadcast same, without the consent first obtained from plaintiff individually and as cotrustee of Fleischer Studios, Florida, in dissolution, and without compensation to him in said or any capacity."

Dumont is also included within the reference to "all" defendants contained in Paragraph 23(h) of the amended complaint.

Thus, Dumont's involvement in this "endless" litigation is limited to its activities with reference to "The Raven".

Concededly, Petitioner's rights, if any, stem from the contract of May 24, 1941. Dumont is not alleged to have been a party to that contract. Nor are there any allegations in the amended complaint of any dealings between Dumont and Petitioner or between Dumont and Fleischer Studios, Incorporated. There is no privity between Petitioner and Dumont. Dumont's use or threatened use of "The Raven" could not have been in breach of any obligation owed to Petitioner or Fleischer Studios, Incorporated, since it arose from rights granted to it by respondent U.M. & M. T.V. Corp. who in turn obtained its rights from respondent, Paramount Pictures, Inc. (Pet. p. 35).

Thus, aside from other grounds upon which the first cause was dismissed, Petitioner does not even present a colorable claim against Dumont.

Dumont's position with regard to the dismissal of the first cause is ably presented in the brief in opposition being submitted by its co-respondent, Paramount Pictures.

Inc. It would be an imposition on the Court and a mere exercise in style to repeat the facts and controlling legal principles. Accordingly, we hereby incorporate so much of said respondent's brief herein by reference as deals with the first cause of action, adopt same and rely thereon.

CONCLUSION

The first cause of action was properly dismissed. The petition for writ of certiorari should be denied.

Respectfully submitted,

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